

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

FINAL STATEMENT OF REASONS

JANUARY 2010

TITLE 13, CALIFORNIA CODE OF REGULATIONS
DIVISION 2, CHAPTER 6.5, AMEND ARTICLE 1, SECTION 1201; ARTICLE 3,
SECTIONS 1212 AND 1213.

DRIVERS' HOURS OF SERVICE – MOTION PICTURE PRODUCTION

(CHP-R-09-14)

(Z-2009-0423-02)

PURPOSE OF REGULATORY ACTION

California Vehicle Code (CVC) Section 2402 authorizes the Commissioner of the California Highway Patrol (CHP) to make and enforce regulations as necessary to carry out the duties of the CHP. Sections 32002, 34501, 34501.2, and 34501.5 CVC, allow the CHP to adopt reasonable rules and regulations which are designed to promote the safe operation of vehicles described in Section 34500 CVC, which are commercial vehicles commonly referred to as “regulated” vehicles (trucks, truck-trailer combinations, buses, etc.). The adopted regulations are contained in Title 13, California Code of Regulations (13 CCR).

This rulemaking action adopts an exemption from the existing driver hours of service (HOS) rules under specific circumstances and allows drivers of property carrying commercial vehicles, operated to or from a theatrical or television motion picture production site, to operate under HOS rules in effect prior to November 11, 2007. This exemption is essentially identical to an exemption effective September 4, 2007, adopted by the Federal Motor Carrier Safety Administration and published in the Federal Register, Vol. 72, No. 128, July 5, 2007. By adopting essentially identical regulations, this rulemaking action will enhance the competitiveness of California by eliminating or modifying, to the extent possible, regulations that represent a negative impact on businesses by conflicting with updated federal regulations. Also, this rulemaking will allow the CHP to comply with the requirements of Section 34501.2 CVC, by adopting regulations consistent with regulations adopted by the United States Department of Transportation. Lastly, this rulemaking action will add nonsubstantive changes to regulatory language in order to lend further clarity to existing rules.

SECTION BY SECTION OVERVIEW

Title 13, California Code of Regulations, Division 2, Chapter 6.5 contains the CHP Motor Carrier Safety Regulations. Article 1, Sections 1200 through 1202.2, contain the Definitions and General Provisions, and Article 3, Sections 1212 through 1218, contain the General Driving Requirements.

Article 1. Definitions and General Provisions.

Section 1201. Definitions.

Subsection (ee) is amended to clearly define a work period and show the differences between the minimum off-duty period required; for bus drivers (eight consecutive hours) and truck drivers (ten consecutive hours).

Article 3. General Driving Requirements.

Section 1212. Driver Hours of Service.

Subsection (k) is amended to reflect the correct subsection reference limiting the eight day cumulative on duty total to 80 hours, for intrastate drivers, listed in Section 1212.5. Subsection “(b)(2)” will be deleted, and “(a)(4)” added.

Subsection (o) is added to exempt intrastate drivers, operating property carrying commercial vehicles to or from a theatrical or television motion picture production site, from the maximum driving and daily on-duty time limits contained in 13 CCR, 1212.5, effective November 11, 2007, providing the driver operates within a 100 air-mile radius of the location where the driver reports to and is released from work; i.e., the normal work reporting location.

Drivers meeting those provisions may operate under the maximum driving and daily on-duty time limits in effect prior to November 11, 2007, allowing such drivers to separate their work periods with a minimum of eight-consecutive hours off-duty and drive up to 12 hours in a work period. With regard to the maximum daily on-duty limit; such drivers will not be able to drive after having been on duty 15 hours in a work period, however, it is not a consecutive hour limit, any off-duty or sleeper berth period will not be used in the calculation of the 15 hour on-duty limit.

Section 1213. Driver’s Record of Duty Status.

Subsection (i)(4) is amended to reflect the correct subsection reference for the definition of “on-duty time” listed in Section 1201. Subsection “q” will be deleted and “s” added.

WRITTEN COMMENT PERIOD

The CHP received one written response to the May 8, 2009, Notice of Proposed Regulatory Action. A summary of the written comment, discussion and response follows.

Written Comment:**Ms. Melissa Patack****Vice President, State Government Affairs****Motion Picture Association of America Inc.****Issue:**

The Motion Picture Association of America Inc. (MPAA) appreciates the CHP proposal to adopt an HOS exemption which is consistent with the exemption contained in Title 49 Code of Federal Regulations (CFR), Section 395.1(p). However, they are concerned the focus of the exemption in 13 CCR 1212(o) is too narrow, since it is limited to drivers transporting property (truck drivers). The MPAA asserts the CHP should mirror 49 CFR, 395.1(p), with a “slight modification” to account for the 12 hour driving time limit afforded intrastate truck drivers. The MPAA requests the proposed verbiage for 13 CCR 1212(o) be amended to include passenger transportation (bus drivers) in an effort to avert any conflict with federal HOS limits, should they be amended in the future.

CHP Response:

The CHP acknowledges the above comment by the Motion Picture Association of America Inc. (MPAA), and has incorporated a copy into the public record.

The exemption proposed by this rulemaking allows truck drivers meeting the conditions of the new section, 13 CCR 1212(o), to operate using the HOS rules in effect prior to November 11, 2007. The primary benefit to the motion picture / television industry is allowing drivers to discount all off-duty and sleeper berth time, from the calculation of their cumulative 15 hour on-duty limit. Also drivers must only take eight-consecutive hours off duty to separate their work periods. This will allow drivers to remain in compliance while still meeting the special needs associated with transportation to and from an active production location.

The HOS rules in effect for bus drivers prior to November 11, 2008, have not changed and contain both of the aforementioned components the MPAA needs for their drivers. Since the early 1960’s bus drivers have been able to exclude any off-duty or sleeper berth time from the calculation of the 15 hour on-duty limit as well as legally separating their work periods with a minimum of eight-consecutive hours off duty.

It should also be noted that although the exemption granted the motion picture / television industry in 49 CFR 395.1(p) contains verbiage that would seem to provide for bus drivers, the exemption is only from the requirements of 49 CFR 395.3(a), “*Maximum driving time for property carrying vehicles.*” The HOS limits for bus drivers are contained in 49 CFR 395.5.

The HOS limits for interstate and intrastate bus drivers have remained unchanged for the last 45 years; therefore, including bus drivers in this proposed exemption is in conflict with 49 CFR 395.1(p), and unnecessary at this time.

STUDIES/RELATED FACTS

None.

LOCAL MANDATE

These regulations do not impose any new mandate on local agencies or school districts.

IMPACT ON BUSINESSES

The CHP has not identified any significant adverse impact on businesses; these changes either maintain reasonable exceptions for carriers not directly subject to federal jurisdiction (to minimize the impact on business) or they simply adopt federal regulations, thereby, eliminating a conflict between state and federal regulations.

ALTERNATIVES

The CHP has not identified any alternative, including the no action alternative that would be more effective and less burdensome for the purpose for which this action is proposed. Additionally, the CHP has not identified any alternative which would be as effective and less burdensome to affected persons other than the action being proposed.

Alternatives Identified and Reviewed

1. Amend the existing regulations for consistency with the federal regulations.
2. Make no changes to the existing regulations. This could result in federal preemption of California's Driver Hours of Service Regulations. If preempted, the state could not enforce any of these regulations as they apply to transportation in commerce, thus jeopardizing public safety and environmental protection. Failure to maintain consistency with the Federal Motor Carrier Safety Regulations would also jeopardize federal Motor Carrier Safety Assistance Program grants used for commercial vehicle enforcement and training. The loss of all or a portion of this funding would in itself represent a negative impact on public safety.

ECONOMIC IMPACT

The CHP has determined these regulatory amendments will result in:

- No increased costs for motor carriers directly subject to federal jurisdiction as previously discussed. This rulemaking action will simply allow the state to enforce federal regulations that already apply, but are enforced currently only by federal inspectors who in some cases apply more severe federal penalties.
- No significant compliance cost for persons or businesses directly affected.
- No discernible adverse impact on the quantity and distribution of goods and services to large and small businesses or the public.
- No impact on the level of employment in the state.
- No adverse impact on the competitiveness of this state to retain businesses, as the majority of other states (especially neighboring) have already adopted these or similar requirements.